



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
CRIMES AMENDMENT (FORENSIC
PROCEDURES) BILL 2001

Second Reading

SPEECH

Monday, 26 March 2001

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Monday, 26 March 2001
Page 25655
Questioner
Speaker Billson, Bruce, MP

Source House
Proof No
Responder
Question No.

Mr BILLSON (Dunkley) (9.53 pm)—The Crimes Amendment (Forensic Procedures) Bill 2001 has undergone a great deal of debate in the Senate, both within the chamber and through the Senate Legal and Constitutional Legislation Committee. So a fair degree of scrutiny has already been granted to this bill since it was introduced on 30 August last year. The reason it has been so closely scrutinised is that it is a very important bill. Previous speakers—and I commend them for their contributions—have outlined how this bill aims to provide the Commonwealth's front line law enforcement agency with some powerful new tools to combat crime. At the same time, we are all aware that with police power comes responsibility and the potential for some of the weaker, less influential, less educated and less financially empowered in our community to be subjected to undue pressures. So the challenge before us with this bill is to provide for that balance between power and responsibility when it comes to investigating criminal matters. This bill does this by aiming to ensure that our law enforcement agencies have access to the most advanced and most reliable investigative tools whilst they use these tools in a manner that is subject to controls with respect to privacy and dignity issues.

This bill amends the existing forensic provisions of the Crimes Act 1914 based on the Model Forensic Procedures Bill. The amendments include the ability to facilitate the establishment of the CrimTrac national DNA database. The bill provides guidelines for collecting forensic material from volunteers, outlines the matching procedures to be used, addresses the issues of interjurisdictional recognition and provides a detailed code governing the taking of forensic material under various circumstances and for various classes of persons. The bill also maintains the balance between the rights of the individual against those of the public interest currently contained in the Crimes Act. It also addresses the full range of available forensic samples, as well as rules for authorising forensic procedures outlined within the bill, while also detailing provisions for how this data is to be included on the national DNA database. Clearly, these are some very significant amendments.

There has been general support from all sides of politics in relation to the bill, as it is recognised that it is in the public interest that law enforcement agencies have available to them the best available technology and methods. There has been debate around the level of protection of civil liberties afforded by the bill. I note in particular the amendments proposed by the Democrats in the Senate. I will come back to these issues a little later. Suffice to say that at this point there has been heated agreement—a lot of action and a lot of activity but general consensus—on the fundamental elements of the bill. I am sure it is a bill that would also have the support of the law enforcement community whose job will be made just that little bit easier with the responsible access to the technology that is available.

So why do we need this legislation? We know that law enforcement has always been a critical part of our democratic society. All students of secondary school politics and legal studies would well be familiar with the concept of executive, judiciary and legislative powers. Governments put up the legislation, the legislature votes to make it law and the courts end up upholding the law. Crucially, it is the law enforcement agencies around the country that ensure that people who choose to break the law are brought before the courts and that the available evidence is provided for the courts to decide cases. This is a fundamentally important role in our democracy. It is also a very difficult role, both in terms of the immediate personal danger which pursuing offenders can bring and in terms of satisfying the numerous conditions on evidence and procedure which legislatures rightly demand.

Currently the forensic legislation in the Crimes Act 1914 takes no account of the situation where a person volunteers to provide a forensic sample for comparison purposes. This might happen in the case of an unidentified body where a number of potential relatives are prepared to provide a forensic sample in an effort to correctly identify the deceased person. Often investigators are confronted with a number of similar crimes. We have heard how 90 per cent of criminal activity is undertaken by about 10 per cent of the population. Over a period there can be a number of these examples from which they may be able to gain forensic evidence to emphasise the point that a single criminal is involved. If the offender in such a case has already been imprisoned, there is currently no way of getting a forensic sample to prove or disprove a particular person's involvement in those further offences. There are other cases where the circumstances suggest one offender, yet the only evidence available might be

DNA. Without the ability to compel suspects to provide samples, or the existence of a database of DNA on which to compare these samples, solving that crime becomes particularly difficult.

An example of the sensitivity of DNA technology in identifying offenders might be a syringe with a small amount of blood residue found at a crime scene. Traditionally, if there was enough blood present it could be typed to provide some circumstantial evidence. With the development of DNA technology, it is now possible to identify whose blood it is and also to swab the outside of the actual syringe and identify who depressed the plunger last. This is an example of a weapon. I hold up a syringe. Increasingly, it is a weapon that is being used in a number of crimes. I believe we should recognise that it is a weapon and take some action to reduce its availability, at the same time as ensuring that syringes are not reused by injecting drug users or become part of a crime scene. Once it is depressed, the needle is retracted. This example is not only evidence of how a weapon can be taken out of the hands of some criminals but also shows you how this technology can be used to swab the outside casing and to check any residue that is in it. This is a constructive measure that I am sure is entirely consistent with what we are discussing tonight. There are opportunities to look at syringes and the evidence available to help in the fight against crime. There is also the ability to look at the syringe itself and recognise that technology is currently available that not only reduces the risk of spreading disease through injecting drug users but also reduces the likelihood of one of these being used in a crime scene.

As with technology in every field, there is constant development in the forensic field. Ninety-eight years ago fingerprints were first used in this country as a means of identification in the field of law enforcement. They are still used today and they are a valuable tool, and they are also recognised in this bill. Technology moves on and now science has provided us with the ability to identify individuals from very small amounts of biological material—even just a few cells. This bill ensures that our law enforcement agencies are able to make use of the technology that is available in the best and fairest way.

The community in my electorate of Dunkley, and I dare to suggest in most electorates in Australia, are concerned with law and order issues. They are concerned that they be able to walk the streets safely without fear of harm or violence and that they do not have to put up with the inconvenience and trauma of being burgled or having their car stolen. CrimTrac is a major commitment by this government to do something positive to ensure that law enforcement agencies can do their job as well as it can be done and that our citizens can feel as safe as they can reasonably expect to feel.

This bill is part of the commitment of this government to ensuring our law enforcement agencies are properly resourced. How does this bill deliver on these objectives? It will ensure that CrimTrac is a meaningful tool for law enforcement. It outlines the requirements for collecting forensic information, whether it be from capable adult suspects, child suspects, incapable suspects, offenders in these categories or people who want to volunteer forensic information of their own accord.

As I suggested earlier, the protection of civil liberties is also an important aspect of this bill. It provides for periods of imprisonment for those who misuse the CrimTrac databases, include information on a database which rightly should not be included or disclose information in other than lawful circumstances. These are important safeguards. The bill has recognised the important distinction between suspects and convicted offenders. With suspects, there are a wider range of potential samples that can be taken. With previously convicted offenders, the need is to obtain a reference sample in the most efficient and painless way.

During the debate on this bill concerns have been raised about the lack of uniformity of legislation across jurisdictions when it comes to forensic procedures. It is true to say that the model criminal code envisaged, as much as possible, uniformity—and this has not been the reality of the situation. The criticism is that, in some jurisdictions, forensic sample collection requirements are not as stringent as the Commonwealth's proposed legislation and that samples taken under these circumstances should not be used. This is a situation which has been faced before. Some here might remember the case of Raymond Edmunds, who was convicted of a number of rapes committed in the eastern suburbs of Melbourne in the 1970s, and two murders committed in Shepparton in the mid-1960s. If my memory serves me correctly, the police of Victoria at the time were aware that the same person had committed the murders and subsequent rapes because fingerprints belonging to the same person had been found at the scenes; however, they were not aware of the identity of the offender. At the time, the police in Victoria did not have the right to take fingerprints from suspects, except by consent. The offender was finally caught because he was arrested on an indecent exposure charge in Albury, New South Wales, where the police did have the power to take fingerprints. These fingerprints were subsequently identified as those from the Victorian offences. So we have some history with inconsistency in forensic collection legislation across jurisdictions.

We have a federation of states forming our Commonwealth, and those states have the constitutional right to make legislation on specific issues, and crime is one of them. When dealing with national forensic databases it is important to ensure that the peculiarities of our Federation do not stand in the way of commonsense. In the case outlined above, nobody would suggest that, having identified the offender in New South Wales, the police should not be able to convey this information to their Victorian colleagues on the grounds that the fingerprints could not have been taken in Victoria. For a national database to be effective there must be the ability to freely but responsibly search suspects and crime scene samples against the database. If these searches reveal potential matches, they should be considered a genuine line of inquiry for the investigators.

Individual safeguards are important and they are built into this legislation. As a result of the Senate Legal and Constitutional Legislation Committee, the government proposed some amendments to the original legislation, including the requirement that constables expressly inform volunteers of the choice they have as to which database their sample goes on. The Commonwealth has also taken steps to ensure that the Privacy Commissioner and the Commonwealth Ombudsman have a role in overseeing the operation of the national DNA database system. The minister has also said that he will encourage as much as possible, through the Standing Committee of Attorneys-General, consistent legislation across the jurisdictions.

As I and previous speakers have mentioned, it is an unfortunate reality of our society that a small number of people commit a large proportion of the crime. The reasons people commit crime are many and varied and are the subject of a great deal of interest from the broader community—from academics, politicians, law enforcement agencies and the public in general. It is generally agreed that a large proportion of crime is related to the illicit drug trade. My electorate of Dunkley is certainly not immune from this scourge of illicit drugs and it is interesting to note the response of some in our community. Some do not bother to take the time to inform themselves of the issues in the drug debate, yet they are happy to make a token gesture or engage in a stunt, in an effort to make it seem like they are doing something. This is a serious proposition that will make serious inroads into drug related crime. We know the complexity of the problem and we should not stand for cute, quick fixes which invariably do not deliver. The drug problem requires a multifaceted approach—a mixture of medical intervention for those who are addicts and for those who are at risk of becoming addicts, of education and parental intervention for younger people growing up in a society where drug use is often seen as a way out, and of law enforcement for those who seek to make financial gains out of the misery of others.

This government has programs to address these different levels of this complex problem. They are national programs working at the community level. This government is providing \$110 million to establish a national system of diverting illicit drug users into compulsory expert assessment and on to education and assessment. I have demonstrated by the use of this weapon—this syringe—that this legislation will help us deal with the enforcement side of the government's Tough on Drugs program by making new technology and new sources of investigation available to be pursued by law enforcement agencies. The Prime Minister has just launched the National Illicit Drug Strategy, which will provide \$27.5 million for community education and information purposes under the Tough on Drugs strategy.

Mr Deputy Speaker, I note that the Attorney-General is at the table. Through you, I commend to him this retractable syringe. I would like to be able to demonstrate to the Attorney how it works, but the beauty of it is that I cannot demonstrate it, because once it is used the needle is retracted. This weapon, which is what a syringe is, can quite easily be neutralised by the use of available retractable syringe technology. That technology is here; it is available and it will not only help stem the spread of drug related disease but also render useless a weapon of choice for many crimes. The Attorney would recognise not only the cell content that would be helpful in the DNA tools that we are making available now but also the capacity to swab the cylinders to see who actually injected last—an example of some of the things that are available to the government with an integrated multifaceted attack on drugs and on law and order issues that concern our community.

In my electorate of Dunkley the Victorian Forensic Science Centre has a small office which houses what is known as the Southern Metropolitan Fingerprint Branch. The staff who work there are involved in the collection of forensic evidence—mainly fingerprints but also DNA samples from crime scenes. One of the centre's finest people actually works with me now, a former fingerprint expert, Jeremy Johnson, and he assures me that the team on Nepean Highway at Seaford are very much looking forward to the CrimTrac system being available to assist them with their work. The staff there on the front line of the law enforcement effort will be able to do their job that little bit better because of the legislation we are discussing tonight. The upgrade of the national fingerprint database and the setting up of the national DNA database provided by this government with the support of \$50

million is an investment in law enforcement techniques and technology. The establishment of CrimTrac means that samples collected by these guys in the electorate of Dunkley can be searched throughout Australia.

This legislation also means that Commonwealth investigators can make use of the data collected by these fine officers who operate out of my electorate and their colleagues all around the country. As in the example before regarding the fingerprints taken in New South Wales which solved a number of serious offences in Victoria, it is sometimes the small cases that can provide the best leads in solving the big ones.

This legislation tonight is another piece in the puzzle of how to address crime and illicit drug activity in our country, a puzzle that the government is committed to solving by working at it from all sides. In the few moments available to me I will not take the temptation of again highlighting why these retractable syringes should be part of every needle supply program in our country. But they would represent a further step in guarding against the transfer of blood borne diseases between injecting drug users and in rendering useless a weapon of choice being used far too often in criminal acts in our community. I commend the bill to the House, I commend this technology to the Attorney-General, who is at the table, and I thank you for your time tonight.